

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

Chad V. Kirvan and
Belinda J. Kirvan,

CHAPTER 7

BKY CASE NO. 03-61143

Debtors.

NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY

TO: The United States Bankruptcy court, the United States Trustee, the debtors, the Debtors' attorney, and all parties who requested notice under Bankruptcy Rule 2002.

1. Tamara L. Yon, Trustee of the bankruptcy estate of the above-named debtors moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at **10:30 a.m. on October 26, 2004**, in US Bankruptcy Court, 204 US Courthouse, 118 South Mill Street, Fergus Falls, Minnesota.
3. Any response to this motion must be filed and served not later than October 21, 2004, at 10:30 a.m. which is three days before the time set for the hearing (excluding Saturdays, Sundays, and legal holidays), or filed and served by mail not later than October 15, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and legal holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, 11 U.S.C. §522, Bankruptcy Rule 5005 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on September 9, 2003. The case is now pending in this Court.
5. This motion arises under 11 U.S.C. §522, and Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 014 and Local Rules 9001-

1 to 9001-6 and 9013-1 and 9013-5. Movant requests relief with respect to debtors' claims for exemption.

6. Debtors filed this chapter 7 bankruptcy on September 9, 2003. In their accompanying schedules, Debtors listed the following real property located in Wadena County, Minnesota, and legally described as follows:

Part of the Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) of Section Thirty-six (36) in Township One Hundred Thirty-five (135) North, Range Thirty-five (35) West of the 5th P.M., described as follows: Commencing at the Southeast corner of said Forty, thence West on the South line thereof, Three Hundred Seventy-five (375) feet; thence North and parallel with the East Line of said Forty, Three Hundred (300) feet; thence East and parallel with the South line of said Forty, Three Hundred Seventy-five (375) feet; thence South on the East line of said Forty, Three Hundred feet, to the point of beginning; subject to rights-of-way of roads, reservations and easements now of record, if any.

Debtors valued said real property at \$23,000.00 and did not claim said real property as exempt. Said real property is unencumbered.

7. In reliance upon the debtors' schedules, the trustee made application for and hired a realtor to sell said real property. In reliance upon the debtors' schedules, the realtor found a buyer for said real property for the sum of \$10,000.00. In reliance upon the debtors' schedules, the trustee filed a Notice of Sale for said real property, filed on August 9, 2004. Pursuant to said Notice of Sale, the debtors were required to file any objection in writing by noon on or before August 30, 2004.

8. Nearly one year after filing their initial schedules, on August 30, 2004, the debtors filed Amended Schedules A, B, C, and an Amended Declaration. The debtors now list the value of said real property at \$15,000.00 and have claimed said real property as exempt.

The trustee objects to the debtors' amended claim of exemption to said real property on the following basis: The debtors' amended claim of exemption, coming nearly a year after filing their chapter 7 case, is prejudicial to creditors and impairs the trustee's diligent administration of the estate. In re Kaelin, 308 F. 3d 885 (8th Cir. 2002); see also In re Houck, 9 B.R. 460 (Bankr. E.D. Mich. 1981); In re Daniels, 270 B.R. 417 (Bankr. E.D. Mich. 2001); In re Clark, 274 B.R. 127 (Bankr. W.D. Penn. 2002).

WHEREFORE, the Applicant moves the court for an order:

- 1) Sustaining trustee's objections to claimed exempt real property;
- 2) Approving the sale of said real property to Sheryl Christian for the sum of Ten Thousand and no/100 Dollars (\$10,000.00); and
- 3) For such other relief as may be just and equitable.

Dated: September 17, 2004.

/e/ Tamara L. Yon
Tamara L. Yon
Trustee in Bankruptcy
P.O. Box 605
Crookston, MN 56716
(218) 281-2400
(218) 281-5831 *Facsimile*

Verification

I, Tamara L. Yon, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 17, 2004

/e/ Tamara L. Yon

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

Chad V. Kirvan and
Belinda J. Kirvan,

CHAPTER 7

BKY CASE NO. 03-61143

Debtors.

ORDER

At Fergus Falls, Minnesota, on October 26, 2004.

Upon the Objection to Claimed Exempt Property filed by the Trustee and upon all the files and records of the proceeding herein,

IT IS ORDERED:

1. That the following asset of the Debtors is not exempt:

Real property located in Wadena County, Minnesota described as follows:

Part of the Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) of Section Thirty-six (36) in Township One Hundred Thirty-five (135) North, Range Thirty-five (35) West of the 5th P.M., described as follows: Commencing at the Southeast corner of said Forty, thence West on the South line thereof, Three Hundred Seventy-five (375) feet; thence North and parallel with the East Line of said Forty, Three Hundred (300) feet; thence East and parallel with the South line of said Forty, Three Hundred Seventy-five (375) feet; thence South on the East line of said Forty, Three Hundred feet, to the point of beginning; subject to rights-of-way of roads, reservations and easements now of record, if any.

2. That the sale of said real property to Sheryl Christian for the sum of Ten Thousand and no/100 Dollars (\$10,000.00) is approved.

Judge Dennis D. O'Brien
US Bankruptcy Court

UNSWORN CERTIFICATE OF SERVICE

I, Terri Beth Dufault, declare under penalty of perjury that on September 17, 2004, I mailed copies of the attached **NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY and proposed ORDER**, by electronically filing with:

US Bankruptcy Court
204 PO Building
118 S. Mill Street
Fergus Falls, MN 56537

And by placing a copy in an envelope, postage prepaid, and by depositing same in the post office at Crookston, Minnesota for delivery by the United States Post Office Department as directed to said:

Habbo G. Fokkena
US Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Kenneth J. Kludt
1001 Center Avenue C
Moorhead, MN 56560

Chad & Belinda Kirvan
706 5th Street NE
Staples, MN 56549

Dated: September 17, 2004

/e/ Terri Beth Dufault
Assistant to Tamara L. Yon,
Chapter 7 Trustee